

PLANNING COMMISSION
COUNTY OF HAWAII

HEARING TRANSCRIPT
DECEMBER 12, 2007

A regularly advertised hearing on the PLANNING DIRECTOR INITIATED AMENDMENT TO CHAPTER 25 (ZONING CODE) REGARDING NONSIGNIFICANT ZONING CHANGES was called to order at 1:50 p.m. at the Waikoloa Beach Marriott Hotel, Alii I, 69-275 Waikoloa Beach Drive, Waikoloa, Hawaii, with Chairman William Graham presiding.

PRESENT: William Graham
C. Kimo Alameda
Takashi Domingo
Shelly Ogata
Alvin Rho
Rene' Siracusa
Rodney Watanabe
Rell Woodward

ABSENT & EXCUSED: Andrew Iwashita

Ivan Torigoe, Deputy Corporation Counsel
Norman Hayashi, Planning Program Manager
Phyllis Fujimoto, Staff Planner
Jeff Darrow, Staff Planner

Christopher Yuen, Planning Director

And 6 people from the public in attendance.

INITIATOR: PLANNING DIRECTOR

Amendment to Section 25-2-45, Chapter 25 (Zoning), Hawaii County Code 1983 (2005 Edition, as amended) with respect to Nonsignificant Zoning Changes.

GRAHAM: The Hawaii County Planning Commission will come back into session. Our first agenda item for the afternoon here is our No. 5 item on the New Business. Initiator is the Planning Director, and he is initiating an amendment to the Hawaii County Zoning Code Section 25-2-45, and that's with respect to nonsignificant zoning changes. So, Mr. Yuen, if you can give us some background on this, please?

YUEN: Good afternoon, everybody. It's a little easier to address the group from here. And I was going to handle the explanation of this item. There is a provision in the Zoning Code called nonsignificant zone changes. The Commission has never dealt with these before because they are completely administrative. The normal zoning change process, the normal rezoning process, you are very familiar with; it's either initiated by the Council, the Planning Director, most commonly by the landowner. It goes to the Planning Commission for consideration, there's public hearings, public notice, and then it goes to the County Council, and the County Council makes the final zoning decision. There is a, the nonsignificant zoning change is a procedure that's allowed by the Zoning Code that empowers the Planning Director to

unilaterally make zoning adjustments or zoning changes to property. There are some restrictions on it; under the current Zoning Code, the basic restriction would be that you cannot increase the density of property. So to give you an example of a fairly common and legitimate use of a nonsignificant zoning change, in many resorts, the golf courses are zoned Open, and they have residential areas zoned Residential that line the golf courses. So these zonings went in typically by, strictly by metes and bounds, and the applicant had an idea of how they were going to lay out the golf course and homes. But in the actual course of development after the zoning happened, they might want to change the boundaries of the golf course. As a result, they might want to build homes where the golf course was supposed be and vice versa. So the nonsignificant zone change allows them to make an application to the Planning Director. There is notice to adjoining property owners, there is a procedure for this, but it does not involve the Council. So the Planning Director can make this kind of zoning change.

My proposal here is, I feel that the current wording of the nonsignificant zone change is too wide-open and allows too much leeway. There have been instances where areas involving considerable acreages have been swapped, including changes where different densities have been moved over noncontiguous properties and involving considerable acreages and considerable distances. Before 1996 the nonsignificant zone change was limited to a maximum of one acre or five percent of a given parcel, whichever is less. So this amendment would change the wording of the Zoning Code back to the limitations in 1996 from what is currently allowed under the nonsignificant zone change.

GRAHAM: Do we have any questions from the Commissioners? Commissioner Siracusa?

SIRACUSA: Yeah, suppose you had a lot and five percent, if you rezone that five percent, it would not be – what’s the word I’m thinking of, when the zoning is different than the number of acres, begins with the “c” –?

YUEN: Nonconforming?

SIRACUSA: Nonconforming, right.

YUEN: And what is your question?

SIRACUSA: So you change the zoning on five percent, but that five percent then would not be in conformance.

YUEN: Well, you could change up to five percent of the parcel or one acre, whichever is less. So in a case of a 100-acre parcel, five percent would be five acres, but you couldn’t change five acres; you would be limited to one acre. On a 10,000, well, on a one-acre lot – let’s see – five percent would be whatever five percent of 40,000-something square feet is, so you would have a maximum of 2,000 square feet that could be changed by a nonsignificant zone change. If the lot was, say the lot is 40,000 square feet, your limitation would be five percent, which would be 2,000 square feet that could be changed by a nonsignificant zone change. That’s how it would work.

SIRACUSA: I was a little bit confused about, now some things in here; I understand about notice to surrounding property owners, about adding that, and -. But why are you taking out “not result in a net increase in the density?” Why is that bracketed?

YUEN: That’s just to return it to the language before 1996.

WATANABE: Mr. Chair?

GRAHAM: Yes, Commissioner Watanabe?

WATANABE: So, Mr. Director, so then on page 1 of the Exhibit A, that is the proposed new wording? Am I correct in that? That ordinance that is attached? But it still does refer to “not result in an increase or decrease in any zoning designation.” Am I right on that?

SIRACUSA: No, that’s the current -.

GRAHAM: It seems like you are just inserting something that kind of is almost the same as words you are removing maybe. Is that the sense, Commissioner Watanabe?

WATANABE: Yeah, and I’m not sure if this, well, it’s, if I heard properly, you’re saying that the current wording is much too broad, if I heard properly, and so it allows for more discretion. And so you are trying to tighten this up, but I’m not sure -.

YUEN: Right, that is the -.

WATANABE: That’s the intent, right?

YUEN: The Exhibit A is the proposed ordinance, yes.

WATANABE: Yeah, so this is the proposed -, how does this tighten it up, though? I’m -.

YUEN: Because it limits the area that can be involved to one acre or five percent.

WATANABE: Oh, prior to this, didn’t -? Oh, okay, okay, okay -.

YUEN: That is, yeah -.

WATANABE: Wait, wait, wait -.

YUEN: That’s not a -.

WATANABE: No, no, this says, current wording -.

YUEN: That’s not a restriction in the current -.

WATANABE: I, well, but isn’t the current wording also on page 1 under No. (2), “Be the lesser of a five percent or one acre increase or decrease in the area of any zoning district(s)?” Isn’t that the current wording?

YUEN: That's an "or," though.

OGATA: It's a "or." Right here.

WATANABE: Oh, okay.

GRAHAM: Yeah, I think we've got that clear yes?

WATANABE: Yeah.

GRAHAM: Good.

YUEN: Oh, and just so the Commission is clear, this is one of those, because it's an overall change to the Zoning Code, this is one of those things that we would present at two meetings, one on each side of the island. So we are not asking for action by the Commission today; this will be again on the, the next meeting in East Hawaii, on the agenda, and that we would ask for the Commission to act at that time. But we, you know, we can continue this, this discussion certainly today.

GRAHAM: So the gist on the actual Exhibit A, Chris, is that in the previous ordinance, we had (1) and (2) and an "or" relationship, whereas you're now sort of saying that they both would have to be fulfilled.

YUEN: It would simply be, allow a five percent increase or decrease in any zoning district.

SIRACUSA: Mr. Chair?

GRAHAM: Okay, yes?

SIRACUSA: I'm afraid I just didn't catch it or understand why you've deleted the "not result in a net increase in the density involved." Maybe I'm dense today, but -.

YUEN: Honestly, I felt that -.

SIRACUSA: 'Cause I like that part.

YUEN: Well, that is also kind of vague as to what that actually means.

SIRACUSA: I mean that's, we are talking about counting numbers, isn't that or, you know, I mean -.

YUEN: The wording of, the wording would allow, the new wording would allow the following, okay – I'm going to, I'll give you an example what the new wording would allow that would not, that might not be allowed in the current wording, all right – if you had 100,000 square feet of RS zone adjoining 100,000 square feet of Open zone, you could increase the RS zone by a nonsignificant zoning change up to five percent, or to 105,000 square feet, without a

corresponding tradeoff in the Open zone, okay, that is true; that is, I would still consider that a nonsignificant zoning change. You would have to have RS zone to begin with, and then you could make up to a five percent increase or decrease in the zoned area.

GRAHAM: Any further questions for the Planning Director? We don't have any public testifiers signed up. If there is anyone at this point who would like to comment from the public, please come forward, and you're welcome to do so. Here comes Jeff. Would we want to proceed and have one of the Commissioners make a motion on this initiative by the Planning Director? Or is there any further discussion we need? All right, so -.

ALAMEDA: I'll make a motion -.

GRAHAM: The motion would be to continue since we are not going to take action today.

ALAMEDA: Are we continuing to the next Kona meeting?

GRAHAM: No, to the next meeting. Which would be the Hilo side meeting -.

ALAMEDA: Next Hilo meeting, yeah. Yeah. Okay, I'll make a motion.

GRAHAM: For continuance -?

ALAMEDA: Continue -.

GRAHAM: Is there a second?

OGATA: Second.

GRAHAM: Okay. Seconded by Commissioner Ogata, moved by Commissioner Alameda, that we continue this until the next meeting, which will be on the Hilo side. Any commentary, discussion? Jeff, would you get the vote, please?

DARROW: Thank you, Mr. Chairman. The motion before us is to continue this agenda item to the next Hilo meeting. With that, I'll take the roll. Commissioner Alameda?

ALAMEDA: Aye.

DARROW: Commissioner Ogata?

OGATA: Aye.

DARROW: Commissioner Domingo?

DOMINGO: Aye.

DARROW: Commissioner Rho?

RHO: Aye.

DARROW: Commissioner Siracusa?

SIRACUSA: Aye.

DARROW: Commissioner Watanabe?

WATANABE: Aye.

DARROW: Commissioner Woodward?

WOODWARD: Aye.

DARROW: And Mr. Chairman?

GRAHAM: Aye.

DARROW: The motion passes, eight to zero.

GRAHAM: Thank you, Jeff.

The discussion ended at 2:05 p.m.

Respectfully submitted,

Noriko Sauer
West Hawaii Secretary